

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayner

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Minnesota Cellular  
Corporation's Petition for Designation as an  
Eligible Telecommunications Carrier

ISSUE DATE: February 10, 2000

DOCKET NO. P-5695/M-98-1285

In the Matter of an Investigation into the  
Merits of Disaggregating the Study Area of  
Frontier Communications of Minnesota, Inc.

DOCKET NO. P-405/CI-00-79

ORDER ACTING ON PETITIONS FOR  
RECONSIDERATION AND OPENING  
INVESTIGATION

**PROCEDURAL HISTORY**

On October 27, 1999 the Commission issued an Order in this case granting preliminary approval to Minnesota Cellular Corporation's application to be designated an "eligible telecommunications carrier" (ETC) under the federal Telecommunications Act of 1996<sup>1</sup> (the Act). The Company needed ETC status to qualify for subsidies from the federal universal service fund.<sup>2</sup>

The Order gave the Company preliminary ETC status for its proposed service area, which covered roughly the northern third of the state. Final approval was contingent upon Commission approval of a compliance filing fleshing out the details of the Company's universal service offering.

The parties to the case were as follows: Minnesota Cellular Corporation; the Minnesota Department of Commerce (the Department); the Residential and Small Business Utilities Division of the Office of the Attorney General (the RUD-OAG); U S WEST Communications, Inc.; Frontier Communications of Minnesota, Inc. (Frontier); and the Minnesota Independent Coalition, on behalf of 21 rural telephone companies providing service in Minnesota Cellular's proposed service area.

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of title 47, United States Code).

<sup>2</sup> 47 U.S.C. § 214.

Four parties filed petitions for reconsideration of the October 27 Order: Minnesota Cellular, Frontier, U S WEST, and the Minnesota Independent Coalition. The petitions of the Minnesota Independent Coalition, Frontier, and U S WEST were answered by the Department and Minnesota Cellular. The petition of Minnesota Cellular was answered by the Department, the RUD-OAG, the Minnesota Independent Coalition, and U S WEST.

The Commission took up these petitions on January 4, 2000.

## **FINDINGS AND CONCLUSIONS**

### **I. The Reconsideration Petitions**

#### **A. Minnesota Cellular**

Minnesota Cellular sought reconsideration of two decisions:

- (1) the decision to consider affordability in evaluating both its ETC application and its universal service tariffs or price lists;
- (2) the decision requiring the Company to price at least one universal service offering at or below 110% of the current rates of the incumbents.

#### **B. Frontier**

Frontier asked the Commission to reconsider its finding that Frontier was not a "rural telephone company" under 47 U.S.C. § 153 (37).

#### **C. Minnesota Independent Coalition**

The Minnesota Independent Coalition asked the Commission to reconsider three decisions:

- (1) the decision to include the Garden Valley and Wikstrom Service areas in Minnesota Cellular's service area;
- (2) the finding that it is in the public interest to designate Minnesota Cellular an ETC in rural areas served by Coalition members;
- (3) the decision not to subject Minnesota Cellular to the same regulatory regime as land line competitive local exchange carriers.

The Coalition also requested clarification on three issues:

- (1) the number of carriers whose service areas will be served by Minnesota Cellular;

(2) the relationship between the Commission's decision to designate Minnesota Cellular an ETC and its belief that it has ongoing jurisdiction over the quality and affordability of Minnesota Cellular's universal service offering; and

(3) Minnesota Cellular's eligibility for universal service funding for its conventional mobile cellular service.

#### **D. U S WEST**

U S WEST asked for reconsideration of three decisions:

(1) the decision that Minnesota Cellular did not have to actually offer and advertise a universal service package (as opposed to demonstrating its ability and intention to offer and advertise a universal service package) to be designated an ETC;

(2) the decision that it was unnecessary, in light of the Commission's ability to protect the public interest by other means, to seriously consider making a finding under 47 U.S.C. § 332 (c) (3) (A) that Minnesota Cellular's services are a substitute for land line services for a substantial portion of the state

(3) the decision not to require Minnesota Cellular to offer at least one universal service package containing only subsidized services.

#### **II. Proposals to Investigate Disaggregating Frontier's Study Area**

The Department and Frontier agreed that a recent Federal Communications Commission (FCC) decision clarified that Frontier was, as it claimed, a "rural telephone company" under the Act.<sup>1</sup> One of the special protections the Act grants rural telephone companies is to require ETCs to serve their entire study areas, unless the state commission and the FCC have agreed to redefine a specific company's service area as something other than its study area.<sup>2</sup> This is sometimes called "disaggregating" a rural company's study area.

The Department and Minnesota Cellular urged the Commission to open an investigation into the merits of disaggregating Frontier's study area. They claimed that any wireless competitor would face the same technical limitations as Minnesota Cellular and that Frontier's expansive study area could be hard for any competitor, land line or wireless, to serve in its entirety.

#### **III. Summary of Commission Action**

Having reviewed the record and carefully considered the arguments of all parties, the Commission will take the following actions.

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<sup>1</sup> 47 U.S.C. § 153 (37)

<sup>2</sup> 47 U.S.C. § 214 (e) (5)

The Commission will correct an error in its October 27 Order misidentifying the small carriers in whose service areas Minnesota Cellular intends to offer service.

The Commission will reconsider and reverse its finding that Frontier is not a rural telephone company and will rescind its designation of Minnesota Cellular as an ETC in areas served by Frontier.

The Commission will open an investigation to explore the merits of disaggregating Frontier's study area.

The Commission will remove the requirement that Minnesota Cellular's tariffs/price lists include at least one universal service offering priced at or below 110% of the current rates of the incumbents. Instead, the Commission will examine the tariffs/price lists in the Company's compliance filing for compliance with the affordability requirement set forth in the original Order.

On all other issues the Commission will deny reconsideration and affirm its original Order. On these issues the Commission finds that the parties have not raised new arguments, pointed to new and relevant evidence, exposed errors or ambiguities in the original Order, or otherwise persuaded the Commission that it should rethink its original decisions. The Commission therefore concludes that its original decisions on these issues are the ones most consistent with the facts, the law, and the public interest.

#### **IV. Affected Small Carriers Clarified**

Minnesota Cellular originally requested ETC status in the service areas of 37 rural carriers, but later reduced that number to 22. The Order inadvertently listed the original 37.

The Commission reconsiders and clarifies that only the Minnesota exchanges of the 22 small carriers listed in MCC Exhibit 4, which is also Exhibit A of the direct testimony of Gene Defordy, are included in Minnesota Cellular's service area.

#### **V. Frontier's "Rural Telephone Company" Claim Upheld**

The Commission agrees with the Department and Frontier that a recent Federal Communication Commission (FCC) decision makes it clear that Frontier is, as it claimed, a "rural telephone company" under the Act.<sup>1</sup> One of the special protections the Act grants rural telephone companies is to require ETCs to serve their entire study areas, as opposed to smaller "service areas" within their study areas, unless the state commission and the FCC have agreed to divide a specific company's study area into smaller service areas.<sup>2</sup>

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<sup>1</sup> Tenth Report and Order, CC Docket No. 96-45 and CC Docket No. 97-160, November 2, 1999.

<sup>2</sup> 47 U.S.C. § 214 (c) (5).

Minnesota Cellular admits that it cannot serve Frontier's entire study area. This Commission and the FCC have not agreed to divide Frontier's study area into smaller service areas. Minnesota Cellular therefore fails the ETC test as to Frontier's service area, and the Commission rescinds its preliminary designation of the Company as an ETC in areas served by Frontier.

#### VI. Disaggregation Investigation Opened

The Department and Minnesota Cellular urged the Commission to open an investigation into the merits of disaggregating Frontier's study area into smaller service areas. They believed that the size, complexity, and diversity of Frontier's study area could prevent any carrier from qualifying for ETC status there, depriving consumers of the benefits of competition.

The Commission is committed to furthering competition throughout the state and will therefore open an investigation to determine whether the public interest requires the disaggregation of Frontier's study area.<sup>7</sup> The Commission will delegate to the Executive Secretary the authority to set comment deadlines and other procedural time lines.

#### VII. Pricing Requirement Removed

In its initial Order, the Commission found that it had the authority and the duty to consider affordability in acting on Minnesota Cellular's application and that it would have the same authority and duty in acting on the universal service tariffs or price lists the Company would eventually file. Since the Company had stated in sworn testimony that it would price at least one of its universal service packages at or below 110% of incumbents' rates, and since the Commission viewed that price as clearly affordable, it incorporated the Company's promise as a requirement in its Order. That seemed to be a fair and efficient way to ensure affordability, while expediting the tariff/price list review process.

On reconsideration, however, the Company has stated that it may not literally keep its promise to price at or below 110% of incumbents' rates, in large part because it is impractical to have separate rates for the service areas of all 22 incumbents. Here the Company makes a good argument.

The Commission adopted the 110% figure not because rates *had* to be at or below that level to be affordable, but because the Company had said that rates *would* be at or below that level, which the Commission considered clearly affordable. (The Commission considered incumbents rates affordable on their face, since they had all met the "fair and reasonable" standard of the telecommunications statute.<sup>8</sup>)

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<sup>7</sup> In the Matter of an Investigation into the Merits of Disaggregating the Study Area of Frontier Communications of Minnesota, Inc. Docket No. P-405/CI-00-79.

<sup>8</sup> Minn. Stat. § 237.06.

Given these facts, it made little sense for the Commission to defer judgment on whether the Company's universal service offering would be affordable -- as long as the Company did what it said, the offering would be affordable. Making that clear in the initial Order was intended to expedite the Commission's (and the parties') examination of the Company's compliance filing.

Now that it is clear that this attempt to simplify compliance filing review may have raised more problems than it solved, the Commission will eliminate the requirement that at least one universal service package be priced at or below 110% of incumbents' rates. The Commission will instead exercise its authority and duty to consider affordability in acting on the tariffs/price lists in the same manner that it exercised that authority in acting on the Company's application.

### VIII. Conclusion

On reconsideration, the Commission will take the following actions:

- correct an error in its list of carriers affected by Minnesota Cellular's ETC designation;
- reverse its denial of Frontier's claim to "rural telephone company" status;
- rescind its designation of Minnesota Cellular as an ETC in portions of Frontier's service area;
- open an investigation into the merits of disaggregating Frontier's study area;
- remove the requirement that Minnesota Cellular's universal service tariffs or price lists include at least one service offering priced at or below 110% of incumbents' current rates.

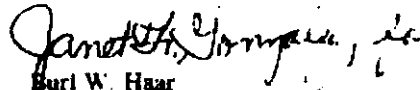
Reconsideration on all other issues is denied, and the remainder of the October 27 Order in this case is affirmed.

### ORDER

1. The list of local exchange carriers on page 4 of the October 27, 1999 Order in this case is amended to include only the Minnesota exchanges of the 22 small carriers listed in MCC Exhibit 4, which is also Exhibit A of the direct testimony of Gene DeJordy.
2. The Commission finds that Frontier Communications of Minnesota, Inc. is a "rural telephone company" within the meaning of the federal Telecommunications Act of 1996.
3. The Commission rescinds its preliminary designation of Minnesota Cellular Corporation as an eligible telecommunications carrier for portions of Frontier's service area.
4. The Commission opens an investigation into the merits of disaggregating Frontier's study area and delegates to the Executive Secretary the authority to set comment periods and other procedural time lines.

5. The Commission eliminates from its October 27, 1999 Order in this case the requirement that Minnesota Cellular file at least one universal service package priced at or below 110% of incumbents' rates.
6. All other portions of the October 27, 1999 Order remain unchanged and are affirmed.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

  
Burl W. Haar  
Executive Secretary

(SEAL)

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